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RICHARD W. WIEKING
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NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

MICHAEL J. BYRD,

Defendant.

Civil Action No.

COMPLAINT

WHA
C 07 42231

Plaintiff Securities and Exchange Commission (the "Commission") alleges:

SUMMARY OF THE ACTION

1. From at least 2000 through 2004, Brocade Communications Systems, Inc. ("Brocade" or "the Company"), a San Jose computer storage networking company, concealed millions of dollars in expenses from investors and significantly overstated its income by falsifying records relating to employee stock option grants. The fraudulent scheme was executed by former chief executive officer Gregory L. Reyes ("Reyes"), who routinely backdated stock option grants to give Brocade employees and recruits valuable "in-the-money" stock options without disclosing the practice or recognizing the

1 required compensation expense on the Company's financial statements. To carry out this scheme, for
2 certain highly sought after recruits, Reyes and others falsified paperwork related to the grants to make
3 it look as if the employees had been hired and employed by Brocade long before the time they
4 actually started with the Company, so that those employees could receive options that were backdated
5 to a date in the past when Brocade's stock price was significantly lower.

6 2. Michael J. Byrd ("Byrd") was hired by Reyes in May 1999 as chief financial officer
7 ("CFO"), just as the Company went public. As CFO, Byrd had responsibility for preparing and
8 reviewing Brocade's annual and quarterly financial statements, which described the Company's
9 accounting for stock options. In May 2001, Byrd was promoted to chief operating officer ("COO")
10 and president, positions he maintained until he left Brocade in 2003. On multiple occasions, Byrd
11 learned that Reyes was claiming to have granted options to newly-hired executives, whom Byrd
12 understood were not actually employed by Brocade on the purported grant date. This resulted in the
13 issuance of in-the-money options to the executives, which were not properly accounted for in
14 Brocade's financial statements or disclosed to its shareholders. Byrd was also alerted to other facts
15 suggesting that the CEO was manipulating options grants.

16 3. Although alerted to these facts, Byrd allowed Brocade to represent to shareholders that
17 the Company did not incur expenses for stock options issued to employees, including executives. As
18 a result, Reyes' stock option manipulation continued unabated and Brocade reported materially
19 understated expenses, overstated its income, and falsely represented in certain Commission filings
20 that the Company had incurred no costs for options grants.

21 4. By engaging in the acts alleged in this Complaint, Byrd violated the antifraud, books and
22 records and other provisions of the federal securities laws. The Commission seeks an order enjoining
23 Byrd from future violations of the securities laws, requiring him to disgorge ill-gotten gains with
24 prejudgment interest and to pay civil monetary penalties, and providing other appropriate relief.

25 **JURISDICTION AND VENUE**

26 5. This Court has jurisdiction over this action pursuant to Sections 20(b) and 22(a) of the
27 Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77t(b) and 77v(a), and Sections 21(d), 21(e)
28 and 27 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78u(d), 78u(e) and

1 78aa. The defendant, directly or indirectly, has made use of the means and instrumentalities of
2 interstate commerce, of the mails, or of the facilities of a national securities exchange in connection
3 with the acts, practices and courses of business alleged in this complaint.

4 6. This district is an appropriate venue for this action under Section 22 of the Securities
5 Act, 15 U.S.C. § 77v, and Section 27 of the Exchange Act, 15 U.S.C. § 78aa. The transactions, acts,
6 practices and courses of business constituting the violations alleged herein occurred within the
7 Northern District of California, and the defendant may be found in this district.

8 INTRADISTRICT ASSIGNMENT

9 7. Assignment to the San Francisco Division is appropriate pursuant to Civil Local Rule 3-
10 2(e) because the related litigation, *SEC v. Reyes, et al.* Civil Action No. C-06-4435 CRB (N.D. Cal.),
11 is pending in that division.

12 DEFENDANT

13 8. Michael J. Byrd, 45, of Saratoga, California, was Brocade's CFO and Finance Vice
14 President from May 1999 until May 7, 2001, when the Company's board of directors promoted him
15 to COO and president. He retired from Brocade in January 2003. Before joining Brocade, he was
16 CFO of another public company, Maxim Integrated Products, Inc. From 1982 to 1994, he held
17 various positions, including partner, at Ernst & Young. He is a licensed CPA in California on
18 inactive status.

19 RELEVANT ENTITY

20 9. Brocade is a Delaware corporation based in San Jose, California, that develops and sells
21 storage networking products. Since May 1999 when it completed its initial public offering of stock,
22 Brocade's securities have been traded on the Nasdaq National Market, and the Company has had
23 common stock registered with the Commission under Section 12(g) of the Exchange Act. At all
24 times relevant to this action, Brocade used a fiscal year ending on the last Saturday in October. In
25 May 1999 when the Company went public, Gregory L. Reyes was Brocade's CEO and a member of
26 its board of directors, and beginning in May 2001, Reyes became chairman of Brocade's board of
27 directors. Reyes maintained those positions until resigning them in January 2005. Reyes continued
28 as a director until April 22, 2005, and was described by the Company as an advisor until July 2005.

FACTUAL ALLEGATIONS

The Backdating Scheme

10. Brocade became a public company in May 1999 and quickly experienced substantial growth in revenue and in the size of its operations. Between October 1999 and October 2002, Brocade increased the size of its workforce more than six-fold, hiring over 1,150 employees.

11. To recruit and retain key employees, Brocade made liberal use of employee stock options as a form of compensation. The stock options gave employees the right to buy Brocade's stock at a set price, called the exercise price or "strike" price. The value of the options to the employees increased to the extent that the market price of Brocade's stock exceeded the strike price of the options.

12. Under the accounting rules in effect from the time Brocade became a public company in 1999 through 2004, U.S. public companies were permitted to grant stock options to employees without recording an expense in their financial statements so long as the strike price of the option was at or above the market's closing price for the stock on the day the options were granted. However, for any options granted "in-the-money" – that is, with a strike price below the market price when granted – public companies were required to record a compensation expense in their financial statements. Consequently, granting in-the-money options to employees could have a significant impact on the expenses and income (or loss) reported to the shareholders of a public company.

13. As a public company, Brocade filed with the Commission annual reports that included audited financial statements, certified by the Company's outside auditors. Brocade's public filings affirmatively stated that the Company accounted for its stock options granted to employees in accordance with generally accepted accounting principles, also known as GAAP, which are the accounting conventions, standards, and rules required for preparing financial statements. Brocade further represented that it followed a provision under GAAP requiring an expense to be recorded for stock options granted at prices below the market value for the stock on the date of the grant.

14. Brocade made the statements about accounting for stock options in accordance with GAAP in the notes to its audited financial statements, included in its annual reports to shareholders

1 filed with the Commission on Form 10-K, including those for its fiscal years 2000, 2001 and 2002.
2 Brocade's annual reports on Form 10-K for its fiscal years 2000, 2001, and 2002 represented that,
3 with the exception of certain pre-IPO options granted in 1999, "[n]o deferred stock compensation
4 related to any other periods had been recorded."

5 15. In contravention of Brocade's disclosed practice, CEO Reyes and others systematically
6 created false and misleading "minutes" of purported "meetings," or similar documentation, that
7 represented that options had been granted to employees and executives on particular dates and used
8 the closing price of Brocade's stock on those dates as the options exercise price, although the options
9 had actually be granted and the paperwork prepared days, weeks, or months afterward, when the
10 market price for Brocade's stock was higher. The employees and executives were thereby provided
11 extra, undisclosed compensation in the form of in-the-money options, while Brocade failed to record
12 the necessary expense for the extra compensation.

13 16. During Byrd's tenure at Brocade, the backdating scheme resulted in materially misstated
14 quarterly and annual financial statements and required reports, which Brocade restated in 2005. For
15 example, after restating its financial results, net income for fiscal years 1999 through 2001 declined
16 by a total of \$303 million. Brocade's false and misleading periodic reports were also incorporated by
17 reference into registration statements filed by Brocade with the Commission on Form S-8.

18 **Byrd Learns of Manipulated Options Grants to Executives**

19 17. Byrd joined Brocade as CFO in May 1999 and, until late 1999, assisted Reyes in making
20 stock option grants to employees. After 1999, Byrd was at times consulted about potential grants, but
21 was not routinely involved in the preparation or review of options grant lists.

22 18. On October 22, 1999, Reyes emailed Byrd and others stating that Reyes had awarded
23 options to a vice president on a date several months earlier when Brocade's stock price was trading at
24 a much lower price, but the grant had "fallen through the cracks." Reyes directed that the individual
25 be "added retroactively" to a list of grantees to be reviewed with Brocade's board. While others
26 responded to Reyes' directive, Byrd learned through subsequent emails that the number of options to
27 be retroactively granted to the employee had not yet been established. Although Byrd understood that
28 GAAP required that the number of options be determined at the time of the grant in order to avoid a

1 compensation expense, Byrd permitted the after-the-fact determination of the number of options to go
2 forward, without ensuring that Brocade recorded the necessary expense.

3 19. Ultimately, after Reyes settled on an option grant of 20,000 shares to the employee, Byrd
4 sought assurance from Reyes that Reyes, in fact, had determined to grant the option several months
5 earlier as he had claimed. In an October 24, 1999 email, Byrd wrote: "Greg [Reyes] needs to give us
6 a note," providing written assurance that the grant had actually been made by Reyes on the date
7 indicated in the grant paperwork. However, Byrd did not take steps to determine whether Reyes had
8 actually determined on the date assigned to the grant the number of options to be granted to the
9 employee, nor did he check to see that Reyes had provided a "note" in the vice president's file that
10 said he had done so. Brocade did not record an expense in its financial statements for this in-the-
11 money grant.

12 20. In October 1999, in response to an accounting interpretation then being proposed, Byrd
13 emailed Reyes suggesting that to provide well-timed options grants to individuals before they started
14 working full time for Brocade, the Company should hire the employees on a part time basis and "pay
15 them for four hours a week until they start." Byrd understood the proposed accounting interpretation
16 regarded the definition of an "employee," which was important because the granting of options to
17 non-employees would require a public company to record an expense. Byrd added that he viewed his
18 suggestion to Reyes as a "silly solution but it is the only one I can think of."

19 21. Brocade thus instituted a so-called "part-time" program, which became the subject of
20 abuse and a means for granting options to individuals who were not employees on the date stock
21 options were purportedly granted to them. Byrd became aware of facts suggesting that Reyes and
22 others were misusing the part-time program.

23 22. On June 27, 2000, Reyes and Byrd received an email forwarding a June 23, 2000 request
24 from a Brocade recruiting manager seeking authority to make an offer of employment, including a
25 proposed option grant, to an individual then interviewing at Brocade for a vice president position.
26 The email indicated that as of June 23, 2000, the VP candidate had not yet been given an offer and
27 was employed full-time at another company. Although on June 23, 2000 Brocade's stock closed at
28 approximately \$156 per share, the manager recommended that the VP recruit be offered options with

1 a strike price of "\$135 or less." The June 27, 2000 email (sent when Brocade's price was trading at
2 \$160 per share), stated: "Greg [Reyes] and Mike [Byrd] will need to approve offer date (i.e. 6/14
3 @[\$]138.141 or 6/12 @[\$]134.313)."

4 23. The candidate received an offer letter dated June 12, 2000, two weeks prior to the email
5 exchange discussing his potential hiring, which indicated he would be granted 125,000 options, and
6 described a supposed part-time start date of June 12, 2000. The candidate, along with many other
7 Brocade employees, was ultimately granted options in a grant that was dated June 12, 2000 and which
8 described the strike price as the supposed "fair market value" of \$134.31, the closing price of
9 Brocade's stock on June 12, 2000. Brocade did not record an expense for this in-the-money grant,
10 and Byrd did not notify the Company's auditors that the candidate was neither a part-time nor a full-
11 time employee on June 12, 2000.

12 24. Again, on August 7, 2000, a Brocade VP emailed Reyes, Byrd and others, informing
13 them that he had identified an ideal candidate for director of software at Brocade. However, the email
14 indicated that a lucrative package would be required to lure the candidate away from another
15 company where he was then employed full-time. The VP sought authority from Reyes to offer
16 options for "130,000 shares-150,000 shares at [\$]160." On August 7, 2000, Brocade's stock was
17 trading in the \$199-\$214 range, and the email made clear that the requested strike price of \$160
18 would create a "current value of \$5.2 [million] at 200 [dollars per share]."

19 25. Reyes responded by emailing Byrd and others, stating: "The great news is that I
20 approved his stock some time ago when he agreed to become a part time employee. The gain that he
21 has should be compelling." Notwithstanding the inconsistency of Reyes' purported "approval" of a
22 grant before the candidate had even been offered or accepted the position, Byrd sent an email to
23 another person working closely with Reyes in preparing the options grants, merely stating: "Please
24 make sure that we made [the candidate] a part time employee when his stock option was granted and
25 all of the documentation is in agreement with this fact." Brocade did not record an expense for this
26 in-the-money grant.

27 26. In September 2001, after Byrd had become Brocade's COO, Byrd began recruiting
28 Richard Geruson for a position as Brocade's chief marketing officer. Byrd's efforts were

1 unsuccessful; Geruson turned down the position in November 2001, and it was offered to someone
2 else. However, in late December 2001, Geruson began interviewing with Byrd for a different
3 position, as Brocade's vice president of customer care. Sometime in mid-January, Byrd verbally
4 offered the position to Geruson, who accepted this position on January 23, 2002. On February 13,
5 2002, Byrd sent an email to all Brocade employees announcing Geruson's arrival and welcoming him
6 to Brocade.

7 27. Despite the fact that Geruson did not accept employment with Brocade until January
8 2002, around February 6, 2002, Reyes signed minutes of a purported Committee meeting on October
9 30, 2001 indicating that Geruson's hire date was October 30, 2001 and that Reyes awarded options to
10 Geruson (and many others) on October 30, 2001 with a \$24.20 exercise price, which was the closing
11 price of Brocade's stock on that date. Brocade did not record an expense for this in-the-money grant.

12 28. On February 11, 2002, shortly before Geruson actually started working at Brocade, Byrd
13 received emails from an employee in Brocade's human resources department stating that Geruson had
14 requested that his official full-time start date be changed to February 13, 2002. Byrd responded by
15 stating, "[w]e need to make sure that the record reflects that this is his full time start date vs. his
16 earlier part-time start date." The employee emailed Byrd back that the "part-time" start date had been
17 designated October 30, 2001, to which Byrd responded by thanking the employee. As Byrd was
18 aware, Geruson did not begin work at Brocade – part-time or otherwise – until February 2002. Byrd
19 also did not reveal this discrepancy to the Company's external auditors.

20 29. On January 31, 2002, Byrd interviewed Daniel Cudgma for a position as a Brocade sales
21 director. Byrd knew that Reyes would also interview Cudgma for the position. On the morning of
22 February 1, 2002, Reyes met with Cudgma and, later that day, Reyes sent an email to Byrd and others,
23 stating "I love Dan [Cudgma]." Reyes suggested that Cudgma be hired and directed that Cudgma be
24 given "the Q1 option \$2x.xx option price," referring to Brocade's closing stock price on November
25 28, 2001 (\$28.82), one of the low closing prices in Brocade's first fiscal quarter. On February 1,
26 2002, Brocade's stock was trading around \$37 per share, and had not traded below \$30 per share
27 since November 28, 2001.

1 30. As Byrd was aware, Brocade's first quarter had ended on January 26, 2002, several days
2 before Byrd received Reyes' email about Cudgma's options grant. Reyes later signed purported
3 "minutes" of a supposed Committee meeting on November 28, 2001, awarding options to Cudgma
4 (and many others) with the \$28.82 strike price, and which also described Cudgma's hire date as
5 November 28, 2001. Brocade did not record any expense for this in-the-money grant.

6 31. Byrd himself also received backdated options. Based upon the recommendation of
7 Reyes, Brocade granted to Byrd options to purchase 800,000 shares of Brocade stock, with an
8 exercise price of \$20.70, purportedly on April 17, 2001. However, these options were not actually
9 granted until sometime in May 2001, and were then backdated to April 17, 2001. Byrd received an
10 email in May 2001 indicating that the number of options he would be granted was still undecided.
11 On or around June 15, 2001, Byrd was sent notification of the grant of 800,000 options clearly stating
12 that the grant was effective April 17, 2001 with a strike price of \$20.70 per share. By mid-June 2001,
13 Brocade's stock was trading around \$40 per share, nearly \$20 per share above the exercise price for
14 each of Byrd's options.

15 32. However, Byrd filed an annual statement with the Commission on Form 5 in December
16 2001, which falsely stated that the options were granted on April 17, 2001, at a price of \$20.70. In
17 addition, in financial statements included in periodic reports filed with the Commission (on Forms
18 10-Q and 10-K), and in a proxy statement filed with the Commission on February 25, 2002, Brocade
19 represented that no expense had been incurred in connection with this grant and that Byrd's options
20 were not in-the-money when granted.

21 **Byrd Permitted Brocade to Issue Materially False Financial Statements**

22 33. Brocade filed annual reports on Forms 10-K for fiscal years 2000, 2001, and 2002, and
23 quarterly reports filed on Form 10-Q for the fiscal quarter ended April 28, 2001 through the fiscal
24 quarter ended January 25, 2003, which materially misrepresented Brocade's stock-based
25 compensation expense and net income and loss, and made materially false and misleading disclosures
26 and omitted material information about Brocade's stock option practices. Byrd, as Brocade's CFO
27 until May 2001, reviewed the financial statements and made representations to Brocade's outside
28

auditors about their accuracy. Also, as Brocade's president and COO from May 2001 until he left Brocade in January 2003, Byrd had continuing responsibility for the accuracy of those reports.

34. Between 2000 and 2003, Brocade also filed several registration statements with the Commission recording its offer of stock to employees, including statements dated August 13, 1999, January 28, 2000, June 13, 2000, and January 16, 2001, all of which Byrd reviewed and signed. Those registration statements incorporated Brocade's materially misleading periodic reports.

35. Byrd knew, or was reckless in not knowing, that Brocade's CEO and others were purporting to grant options to executives on dates that were significantly earlier than the persons actually became employed by Brocade, in order to provide those executives with in-the-money options. Byrd further knew, or was reckless in not knowing, that Brocade failed to record the required compensation expense for granting in-the-money options, or options to non-employees. Byrd therefore knew, or was reckless in not knowing, that Brocade's financial statements and the company's disclosures to shareholders were rendered materially false and misleading.

36. During the period from 2000 through 2001, Byrd was unjustly enriched by Brocade's stock option manipulation and the failure to properly record expenses at Brocade. Among other things, Byrd received bonuses or stock options, and exercised stock options, and sold shares of Brocade stock.

FIRST CLAIM FOR RELIEF

Violations of Section 17(a) of the Securities Act

37. The Commission realleges and incorporates by reference Paragraphs 1 through 36 above.

38. By engaging in the conduct described above, Defendant, directly or indirectly, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails:

- (1) with scienter, employed devices, schemes or artifices to defraud;
- (2) obtained money or property by means of untrue statements of a material fact or omissions to state a material fact necessary in order to make the statements

made, in the light of the circumstances under which they were made, not misleading; and

- (3) engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon purchasers of securities.

39. By reason of the foregoing, Defendant has violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

SECOND CLAIM FOR RELIEF

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

40. The Commission realleges and incorporates by reference Paragraphs 1 through 36 above.

41. By engaging in the conduct described above, Defendant, with scienter, directly or indirectly, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce or of the mails, or of facilities of a national securities exchange:

- (a) employed devices, schemes, or artifices to defraud;
- (b) made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and
- (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons, including purchasers and sellers of securities.

42. By reason of the foregoing, Defendant has violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5.

THIRD CLAIM FOR RELIEF

Violations of Section 13(b)(5) of the Exchange Act and Rule 13b2-1 Thereunder

43. The Commission realleges and incorporates by reference Paragraphs 1 through 36 above.

44. By engaging in the conduct described above, Defendant knowingly falsified books, records, or accounts of Brocade, or knowingly circumvented or failed to implement a system of internal accounting controls.

45. By engaging in the conduct described above, Defendant, directly or indirectly, falsified or caused to be falsified, books, records, or accounts subject to 15 U.S.C. § 78m(b)(2)(A).

46. By reason of the foregoing, Defendant has violated, and unless restrained and enjoined will continue to violate, Section 13(b)(5) of the Exchange Act, 15 U.S.C. § 78m(b)(5), and Rule 13b2-1, 17 C.F.R. § 240.13b2-1.

FOURTH CLAIM FOR RELIEF

Violations of Exchange Act Rule 13b2-2

47. The Commission realleges and incorporates by reference Paragraphs 1 through 36 above.

48. Defendant, as an officer of an issuer, by engaging in the conduct described above, directly or indirectly, in connection with (a) an audit, review or examination of the financial statements of the issuer required to be made pursuant to Commission rules, or (b) the preparation or filing of any document or report required to be filed with the Commission pursuant to Commission rules: (1) made or caused to be made a materially false or misleading statement to an accountant, or (2) omitted to state, or caused another person to omit to state, a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading to an accountant.

49. By reason of the foregoing, Defendant has violated, and unless restrained and enjoined will continue to violate, Exchange Act Rule 13b2-2, 17 C.F.R. § 240.13b2-2.

FIFTH CLAIM FOR RELIEF

Aiding and Abetting Violations of Section 13(a) of the Exchange Act

and Rules 12b-20, 13a-1 and 13a-13 Thereunder

50. The Commission realleges and incorporates by reference Paragraphs 1 through 36 above.

51. Based on the conduct alleged above, Brocade violated Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Rules 12b-20, 13a-1, and 13a-13, 17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13, which obligate issuers of securities registered pursuant to the Exchange Act to file with the Commission annual and quarterly reports that, among other things, do not contain untrue statements of material fact or omit to state material information necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

52. By engaging in the conduct described above, Defendant knowingly provided substantial assistance to Brocade's filing of materially false and misleading reports and filings with the Commission.

53. By reason of the foregoing, Defendant has aided and abetted Brocade's violations, and unless restrained and enjoined will continue to aid and abet such violations, of Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Rules 12b-20, 13a-1 and 13a-13, 17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13.

SIXTH CLAIM FOR RELIEF

Aiding and Abetting Violations of Section 13(b)(2)(A) of the Exchange Act

54. The Commission realleges and incorporates by reference Paragraphs 1 through 36 above.

55. Based on the conduct alleged above, Brocade violated Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A), which obligates issuers of securities registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 78l, to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

56. By engaging in the conduct described above, Defendant knowingly provided substantial assistance to Brocade's failure to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of the assets of Brocade.

1 57. By reason of the foregoing, Defendant has aided and abetted Brocade's violations, and
2 unless restrained and enjoined will continue to aid and abet such violations, of Section 13(b)(2)(A) of
3 the Exchange Act, 15 U.S.C. § 78m(b)(2)(A).

4 **SEVENTH CLAIM FOR RELIEF**

5 *Aiding and Abetting Violations of Section 13(b)(2)(B) of the Exchange Act*

6 58. The Commission realleges and incorporates by reference Paragraphs 1 through 36
7 above.

8 59. Based on the conduct alleged above, Brocade violated Section 13(b)(2)(B) of the
9 Exchange Act, 15 U.S.C. § 78m(b)(2)(B), which obligates issuers of securities registered pursuant to
10 Section 12 of the Exchange Act, 15 U.S.C. § 78l, to devise and maintain a sufficient system of
11 internal accounting controls.

12 60. By engaging in the conduct described above, Defendant knowingly provided
13 substantial assistance to Brocade's failure to devise and maintain a sufficient system of internal
14 accounting controls.

15 61. By reason of the foregoing, Defendant has aided and abetted Brocade's violations, and
16 unless restrained and enjoined will continue to aid and abet such violations, of Section 13(b)(2)(B) of
17 the Exchange Act, 15 U.S.C. § 78m(b)(2)(B).

18 **EIGHTH CLAIM FOR RELIEF**

19 *Violations of Section 16(a) of the Exchange Act and Rule 16a-3 Thereunder*

20 62. The Commission realleges and incorporates by reference Paragraphs 1 through 36
21 above.

22 63. Based on the conduct alleged above, by filing inaccurate statements with the
23 Commission regarding his change in ownership of Brocade shares during fiscal year 2001, Defendant
24 violated Section 16(a) of the Exchange Act, 15 U.S.C. § 78p(a), which obligates officers and directors
25 of issuers registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 78l, to file with the
26 Commission statements regarding ownership of securities of the issuer.

64. By reason of the foregoing, Defendant has violated, and unless restrained and enjoined will continue to violate Section 16(a) of the Exchange Act, 15 U.S.C. § 78p(a), and Exchange Act Rule 16a-3, 17 C.F.R. § 240.16a-3.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

Issue an order permanently restraining and enjoining Defendant and his agents, servants, employees, attorneys, and assigns, and those persons in active concert or participation with them, from violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), and Sections 10(b) and 13(b)(5) of the Exchange Act, 15 U.S.C. §§ 78j(b) and 78m(b)(5), and Rules 10b-5, 13a-14, 13b2-1, and 13b2-2, 17 C.F.R. §§ 240.10b-5, 240.13a-14, 240.13b2-1 and 240.13b2-2, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, 15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B), and Rules 12b-20, 13a-1 and 13a-13, 17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13.

II.

Issue an order directing Defendant to disgorge all wrongfully obtained benefits, plus prejudgment interest.

III.

Issue an order directing Defendant to pay civil monetary penalties under Section 20(d) of the Securities Act, 15 U.S.C. §§ 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. §§ 78u(d)(3).

IV.

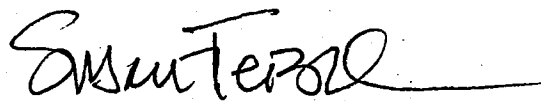
Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

V.

Grant such other and further relief as this Court may determine to be just and necessary.

Dated: August 17, 2007

Respectfully submitted,



Susan Fleischmann
Attorney for Plaintiff
SECURITIES & EXCHANGE COMMISSION